IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 1152 of 2007
DATE OF DECISION: October 30, 2007

Knittex Overseas Pvt. Ltd.

…Petitioner-company

Versus

State Bank of Patiala and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Ashwani Kumar Chopra, Senior Advocate, with
Ms. Sabhiya Sood, Advocate,
for the petitioner-company.

Mr. H.N. Mehtani, Advocate, with
Mr. P.S. Arora, Advocate,
for the respondents.

M.M. KUMAR, J.

This order shall dispose of C.W.P. Nos. 1152, 1239, 1240 and 1241 of 2007 as all the petitions relate to one group of companies. Even question of law and facts involved are common to all the petitions. However, the facts are being referred from C.W.P. No. 1152 of 2007, which has been filed under Article 226 of the Constitution with a prayer for issuance of direction to the State Bank of Patiala-respondent nos. 1 and 2 to settle the loan account of the

petitioner-company in terms of the guidelines/directives issued by the Reserve Bank of India-respondent No. 3 from time to time for settlement of accounts which have been rendered Non-Performing Asset (NPA). The petitioner-company has also sought further direction to respondent No. 3 to exercise its powers under the Banking Regulation Act, 1949 (for brevity, 'the Act') and get the guidelines/directives for the settlement of NPA account enforced by issuing directions/instructions to the respondent Bank. It has still further been prayed that sale notice dated 23.12.2006 (P-17) be quashed.

Facts in brief are that the petitioner-company is a Private Limited Company, which was incorporated on 11.2.1988 under the Companies Act, 1956. It is engaged in the business of hosiery goods and spinning of yarn, which were to be supplied to its concerns group as also to other manufacturers of knitwears. Those knitwears were to be exported out of India. For carrying on its business, the petitioner-company availed financial assistance in the form of Cash Credit Hypothecation Limited (CCL) and Medium Term Loan (MTL) from the respondent Bank. It is claimed that uptil 1994 the petitioner-company continued to serve its financial liabilities towards the respondent Bank, however, in the year 1994 a major fire broke out in the unit of the petitioner-company resulting into loss of around Rs. 5.0 crores of raw material and semi-finished goods, which were to be exported. The machinery and building were also damaged. It is asserted that on account of aforementioned incident of fire the petitioner-company could not adhere to the repayment schedule and

resultantly on 31.3.1995 its account with the respondent Bank became a Non-Performing Asset. In the year 1997, the claim lodged by the petitioner-company with Insurance Company was also rejected. Accordingly, the petitioner-company approached the respondent Bank with a rehabilitation proposal. After considering the rehabilitation proposal, the respondent Bank conveyed its approval with some modifications to the petitioner-company vide letter dated 20.8.1999 (P-1), wherein properties which were kept as collateral securities as also the repayment schedule were also specified. However, there was change brought-about in the constitution of the petitioner-company in pursuance to some family settlement and the petitioner-company instead of accepting the rehabilitation proposal sought one time settlement of its account with the respondent Bank so as to discharge its continuing and recurring future liabilities. In this regard, the petitioner-company while making payment of Rs. 4,06,331/-, vide letter dated 22.1.2000 (P-2), requested the respondent Bank for one time settlement of its account. It is claimed that on 27.7.2000, the Reserve Bank of India-respondent No. 3 made amendments in the guidelines/policy for recovery of NPAs with a view to effect maximum recoveries from the NPA accounts of the banks. The said guidelines were issued in public interest in general and in the interest of banking policy in particular. The guidelines were to be applied uniformly without any discretion and discrimination as per the settlement formula stated in the guidelines itself (P-3).

On 26.9.2000, the petitioner-company again applied for one time settlement under the guidelines dated 27.7.2000, while giving the calculation of the outstanding amount which were payable. It was also requested that the earlier payment of Rs. 4,06,331/- be adjusted towards one time settlement (P-4). On 25.4.2001, respondent Bank approved the one time settlement of Rs. 35 lacs terming it as the compromise offer of the petitioner-company (P-5). It has been alleged that there was no reason to offer the said amount of Rs. 35 lacs as the account being NPA was liable to be settled only under the statutory guidelines. The petitioner-company accepted the alleged compromise amount of Rs. 35 lacs with further stipulation that the same could be paid only by selling its mortgaged property i.e. C-172, Focal Point, Phase V, Dhandari Kalan, Ludhiana. The respondent Bank was also apprised that since in view of the family settlement the aforementioned property had come to the share of Shri Munish Dhir, one of the Directors of the petitioner-company, the same should not be clubbed with other accounts. The petitioner-company further paid an amount of Rs. 21.45 lacs with a view to finally liquidate its liability under the one time settlement policy till the expiry of the extended period for payment of OTS i.e. till 31.3.2003.

On 29.1.2003, the Reserve Bank of India-respondent No. 3 further revised its guidelines for one time settlement of chronic NPAs with the object of realising dues from the NPA Accounts. These guidelines appear to be even more liberal and favourable to borrower. In the revised guidelines even those cases were covered

where action under the Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the 2002 Act') was taken as also the cases which were pending before Courts/DRTs/BIFR etc. As per the said guidelines, applications were required to be given by 30.4.2003 and the banks were required to give notice by 28.2.2003 to the eligible defaulting borrowers to avail the opportunity for one time settlement of their outstanding dues (P-6). It has been alleged by the petitioner-company that the respondent Bank neither granted it benefit under the guidelines dated 27.7.2000 (P-3) nor gave any notice under the revised guidelines dated 29.1.2003 (P-6).

On 3.4.2003, the petitioner-company again requested the respondent Bank to settle its account as per the guidelines formulated on 29.1.2003. It was also requested that the amount of Rs. 21.56 lacs paid by the petitioner-company be adjusted towards the OTS amount of Rs. 28 lacs, which according to the petitioner-company was outstanding as per the revised guidelines dated 29.1.2003 (P-7). It is claimed that in this manner, the petitioner-company was liable to pay only Rs. 6.50 lacs as balance.

On 29.7.2003, the Reserve Bank of India-respondent No. 3 further issued guidelines laying down specific procedure for classifying an account as a defaulter (P-8). The aforementioned guidelines were issued by respondent No. 3 keeping in view numerous complaints of arbitrariness and discrimination in implementation of its guidelines issued for one time settlement of the NPA accounts. The case of the petitioner-company is that despite

binding nature of the guidelines, when the respondent Bank did not settle the account of the petitioner-company, on 28.8.2004 the petitioner-company sought permission of the respondent Bank for selling its property and liquidate the amount of Rs. 35 lacs, which was initially conveyed by the respondent Bank to the petitioner-company. In order to show its bonafide, the petitioner-company also permitted the respondent Bank to appropriate fixed deposit of Rs. One lac, which was in the name of Shri Munish Dhir, towards the OTS amount (P-9). However, the respondent Bank declined to grant permission to sell the property, vide letter dated 3.9.2004. It has been asserted that on a number of occasions thereafter the petitioner-company approached the respondent Bank for settlement under the guidelines dated 27.7.2000 (P-3) and 29.1.2003 (P-6) but the bank refused to give the benefit of aforementioned guidelines. A joint proposal for one time settlement was also submitted by the petitioner-company on 31.1.2005 after consultation with the officials of the respondent Bank. On 15.2.2005, the petitioner-company further reasserted its commitment to make payment of Rs. 19 lacs as per its share in the joint proposal. It is claimed that the respondent Bank asked the petitioner-company to pay a sum of Rs. 23 lacs instead of Rs. 19 lacs, vide letter dated 2.4.2005. The petitioner-company has averred that the benefit of the amount of Rs. 4.06 lacs paid by the petitioner-company was denied to it. On 21.4.2005, the respondent Bank issued a notice under Section 13(2) of the 2002 Act to the petitioner-company.

On 3.9.2005, the Reserve Bank of India-respondent No. 3 issued another scheme/guidelines for settlement of recovery of chronic NPA accounts enlarging the scope of the earlier guidelines with respect to the cut off date and the eligibility of the borrowers (P-12). On 10.1.2006, the petitioner-company applied under the aforementioned guidelines (P-13). However, the respondent Bank in pursuance to the notice under Section 13(2) of the 2002 Act, took possession of the property of the petitioner-company under Section 13(4) of the 2002 Act. It is alleged that the residential house situated in Madhopuri, District Ludhiana, against which proceedings under the 2002 Act were initiated, was not even mortgaged with the respondent Bank. The petitioner-company challenged the action of the respondent Bank by filing an appeal under Section 17 of the 2002 Act, which is stated to be pending.

In response to the request of the petitioner-company, dated 10.1.2006 (P-13), the respondent Bank on 28.1.2006 sent a communication to the petitioner-company intimating that its account is not eligible to be considered under the RBI's OTS scheme as one of its associate concerns, namely, M/s Knittex International was declared as wilful defaulter. On 3.4.2006, the respondent Bank sent another letter informing the petitioner-company that its account(s) can be settled provided a proposal for the group as a whole is submitted (P-14). On 12.8.2006, the petitioner-company acceded to the demand of the respondent Bank and offered to pay Rs. 23 lacs as demanded by the respondent Bank vide letter dated 2.4.2005 (P-11). The petitioner-company also sent a cheque of Rs. 5 lacs and

sought permission to sell its property i.e. C-172, Focal Point, Phase V, Dhandari Kalan, Ludhiana and that its account should be treated as a separate entity and should not be clubbed with other accounts (P-15). However, on 28.11.2006 the respondent Bank again reiterated its stand in respect of composite proposal for the whole group of four companies (P-16). Ultimately, on 23.12.2006, the respondent Bank issued a sale notice wherein the reserve price of the property belonging to the petitioner-company has been assessed at Rs. 113 lacs (P-17). As per the notice, the sale was to be effected through tender and the last date for submitting and opening of tender was fixed as 29.1.2007. The residential house at Madhopuri, Ludhiana, was also included in the aforementioned sale notice. In these circumstances, the petitioner-company has approached this Court by filing the instant petition.

It is appropriate to mention here that on 25.1.2007, at the motion hearing, in order to show its bonafide, the petitioner-company through its counsel undertook to deposit Rs. 50,00,000/- of the amount due against all the four loan accounts towards one time settlement, within two weeks. The aforementioned amount of Rs. 50 lacs was deposited by the petitioner-company, which fact was admitted by the learned counsel for the respondents during the course of hearing on 15.2.2007.

In the written statement filed by the respondent-State Bank of Patiala (respondent Nos. 1 and 2) a preliminary objection has been raised that remedy under section 17 of the 2002 Act has been availed by the petitioner-company and its appeal is pending before

the Debts Recovery Tribunal, Chandigarh. It is claimed that in the face of the remedy of appeal having been availed, no petition under Article 226 of the Constitution challenging any action of the respondent-bank would be maintainable. On merit, it has been claimed that on 20.8.1999 on the proposal made by the petitioner-company, a rehabilitation package was sanctioned to it (P-1), yet it had failed to adhere to the repayment schedule violating the terms of the package. On 17.11.2000, when the petitioner-company again approached the respondent-bank (P-4) for one time settlement, it has sanctioned on 25.4.2001(P-5) a one time settlement. The settlement amount of Rs. 35 lacs was to be cleared and paid alongwith insurance amount of Rs. 9,224/- on or before 20.4.2002. The respondent-bank has claimed that it has sacrificed a sum of Rs. 48.29 lacs. A specific stipulation was incorporated in the settlement dated 25.4.2001 (P-5) that if the petitioner-company failed to meet the obligation as per the terms of settlement, the respondent-bank would be fully entitled to recover the whole amount due to the respondent-bank. The petitioner-company, however, did not adhere to the schedule of repayment and, therefore, it was held not entitled to any relief in terms of settlement/compromise dated 25.4.2001 (P-5). Accordingly, the petitioner-company became a defaulter. There is some further correspondence on 2.4.2005 (P-11), the respondent-bank conveyed to the petitioner-company that it was required to pay a sum of Rs. 28,00,000/- as outstanding dues as on 1.4.2000. The assertion of the petitioner-company is that a residential house bearing Municipal No.

B-249, Madhopur Chowk, Ludhiana, was mortgaged with the respondent-bank as a collateral security in all the four accounts belonging to the group of petitioner-company. Likewise, property bearing No. B-IV-29, Ram Gali, Ludhiana was also mortgaged with the respondent-bank as a collateral security.

The petitioner-company in the replication has asserted that the proceedings pending before the Debts Recovery Tribunal are entirely different whereas in the present petition the petitioner-company is seeking enforcement of statutory guidelines issued by the Reserve Bank of India-respondent No. 3, which have been arbitrarily and malafidely denied to the petitioner-company.

Mr. Ashwani Kumar Chopra, learned senior counsel for the petitioner-company has argued that the guidelines have been issued under Section 21 read with Section 35A of the Act. According to learned counsel, the Reserve Bank of India has been clothed with statutory power and even a duty by Section 35A of the Act to issue direction in public interest or in the interest of banking policy and, thus, one time settlement policy must be considered to have been issued under those policies. In support of his submission learned counsel has placed reliance on two judgments of Hon'ble the Supreme Court in the cases of **Corporation Bank v. D.S. Gowda, (1994) 5 SCC 213** and **Central Bank of India v. Ravindra, JT 2001 (9) SC 101**. He has also placed reliance on another judgment of Hon'ble the Supreme Court in the case of **Canara Bank v. P.R.N. Upadhyaya, (1998) 6 SCC 526** and argued that the circulars

concerning primary lending rate and manner of calculation are issued under Sections 21, 35 and 35A of the Act and there is no reason why one time settlement instructions be not considered as having been issued under the aforementioned provisions.

Mr. H.N. Mehtani, learned counsel for the respondents has vehemently argued that the writ petition for enforcement of guidelines issued by the Reserve Bank of India would not be maintainable because those guidelines do not have any statutory flavour. According to learned counsel, these are the schemes to be used for internal functioning of the banks/secured creditors/financial institutions wherever applicable but cannot be enforced in a Court of law. In support of his submission, learned counsel has placed reliance on a Division Bench judgment of Delhi High Court in the case of **D.K. Gupta v. Oriental Bank of Commerce, II (2006) Banking Cases 140 (DB)** and also another Division Bench judgment of Allahabad High Court in the case of **M/s M.M. Accessories v. M/s U.P. Financial Corporation Kanpur, AIR 2002 All 96** and argued that writ of mandamus could be granted only in a case where there is statutory duty imposed on the officer concerned and that there is failure on the part of the officer concerned to discharge the statutory obligation giving rise to a statutory right. Learned counsel has then placed reliance on a Single Bench judgment of Karnataka High Court in the case of **E. Sathyanarayanan v. Reserve Bank of India, (2002) 112 Company Cases 272** and a Single Bench judgment of Delhi High Court in the case of **M/s Mono Caps (India) v. State**

Bank of India, III (2004) Banking Cases 436 (SB). For the same proposition, learned counsel has placed reliance on another Division Bench judgment of Allahabad High Court in the case of **Sardar Prem Singh v. Bank of Baroda, III (2004) Banking Cases 455 (DB)** and argued that the guidelines are purely executive instructions and no writ on that basis could be claimed. He has also made reference to paras 14 and 15 of a Division Bench judgment of Allahabad High Court in the case of **M/s Maria Plasto Pack (P) Ltd. v. Managing Director, U.P. Financial Corporation, Kanpur, AIR 2004 Allahabad 310**. Reliance has also been placed on a Division Bench judgment of Bombay High Court rendered in the case of **Tuticorin Town Merchants Central Association v. Reserve Bank of India (Writ Petition No. 7994 of 2005, decided on 2.2.2006)**.

The question before this Court is whether the guidelines issued by the Reserve Bank of India for one time settlement could be regarded as statutory in character so as to confer a legal right, which could be enforced by issuance of a mandamus under Article 226 of the Constitution.

Before taking up the legal issue raised by learned counsel for the parties, it would be appropriate to first opine on the factual aspect. The petitioner-company has become defaulter after it has refused to honour the settlement reached on 20.8.1999 (P-1) on the excuse of changes in the constitution of the petitioner-company in pursuance to some family settlement it has instead applied for one time settlement. The respondent-bank has even accepted the one time

settlement, which was accepted on 25.4.2001 (P-5). Even that settlement has not been adhered to because by the time the payment in pursuance to the settlement was to be finally paid, the petitioner-company thought of making use of revised guidelines of one time settlement, which were supposedly more liberal. It is undisputed that the petitioner-company has defaulted and the settlement could be, if any, only for one time not every time at the discretion and fancy of the petitioner-company. There is, thus, no equity in favour of the petitioner-company. It is also pertinent to notice that once the respondent-bank has secured assets in the form of equitable mortgage or collateral security of immovable property, which could satisfy all its claims then there would not be any legal or equitable obligation on the part of the respondent-bank to enter into one time settlement. A perusal of guidelines/one time settlement scheme issued on 27.7.2000 (P-3), 29.1.2003 (P-6), 29.7.2003 (P-8) and 3.9.2005 (P-12) would show that these have been issued by the Chief General Manager of the Reserve Bank of India. In order to acquire statutory flavour, the policy is to be determined in relation to advances to be followed by banking companies by the Reserve Bank of India. There is no statutory authority given to the Chief General Manager under which he could issue guidelines for one time settlement so as to acquire statutory character envisaged by Section 21 and 35A of the Act. Sections 21 and 35A of the Act read thus:-

> "21. Power of Reserve Bank to control advances by banking companies.- (1) Where the Reserve Bank is

satisfied that it is necessary or expedient in the public interest or in the interests of depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1), the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to-

(a) the purposes for which advance may or may not be made,

(b) the margins to be maintained in respect of secured advances,

(c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves any deposits of a banking company and relevant considerations, may be made by that banking company, to any one company, firm, association of persons or individual,

(d) the maximum amount up to which, having regard to the considerations referred to in

Cl.(c), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and

(e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.

(3) Every banking company shall be bound to comply with any directions given to it under this section."

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"35-A. Power of the Reserve Bank to give directions.-(1) Where the Reserve Bank is satisfied that-

(a) in the public interest; or

(aa) in the interest of banking policy; or

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(c) to secure the proper management of any banking company generally; it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking

companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any directions issued under sub-section (1) and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect."

A perusal of the aforementioned statutory provisions would show that the Reserve Bank of India wherever satisfied may determine a policy in relation to advances which is to be followed by the banking companies generally or by any banking company or by any group of banking companies or the banking company concerned. Such policy by the Reserve Bank of India is determined by keeping in view the public interest or the interests of the depositors and has been made binding on all concerned. Sub-section (2) of Section 21 of the Act envisages determination of rate of interest and other terms/conditions on which advances or other financial accommodation may be made or guarantees may be given.

Likewise, the Reserve Bank of India is also clothed with the power to issue directions to the banking companies. It could do so if it is satisfied that issuance of such direction is in the public interest or in the interest of banking policy or to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or prejudicial to the interests of the banking

company or to secure the proper management of the banking company, which such banking company is bound to follow.

The power has been given to the Reserve Bank of India, which means the bank constituted under Section 3 of the Reserve Bank of India Act. 1934. The guidelines which are in the nature of one time settlement and issued by the Chief General Manager cannot be regarded as statutory nor these guidelines have been issued by the Reserve Bank of India. This is the basic flaw in the argument raised by learned counsel for the petitioner-company and their reliance on the judgments of Hon'ble the Supreme Court in the cases of Canara Bank (supra), D.S. Gowda (supra) and Ravindra (supra) is wholly misplaced. The judgment of Hon'ble the Supreme Court rendered by the Constitution Bench in Ravindra's case (supra) has discussed the law on various other issues but has summed up six propositions. In conclusion No. 5, the emphasis is on the nature of directions issued by the Reserve Bank of India and not by any of its functionary and the same reads as under:-

> "(5) The power conferred by sections 21 and 35A of the Banking Regulation Act, 1935 is coupled with duty to act. Reserve Bank of India is prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions, having statutory force, in the interest of public in general and preventing banking affairs from deterioration and prejudice as also to secure

> the proper management of any banking company generally. Reserve Bank of India is one of the watch-dogs of finance and economy of the nation. It is, and it ought to be, aware of all relevant factors, including credit conditions as prevailing, which would invite its policy decisions. RBI has been issuing directions/circulars from time to time which, *inter alia*, deal with rate of interst which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalized. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy."

A perusal of the aforesaid paragraph shows that it primarily deals with the power of the Reserve Bank of India to issue instructions concerning rate of interest, which may be in public interest. It does not even remotely suggest that One Time Settlement Scheme could be issued by the Reserve Bank of India in pursuance to Sections 21 or 35A of the Act. Therefore, we are not able to declare that OTS has its roots in a statute so as to enforce the same by issuing a writ in the nature of mandamus.

It is true that the scope of Article 226 is very wide and in deserving cases Courts may feel inclined to issue mandamus in the larger interest of justice. For example, if possession of a house in pursuance to Section 13(4) of the 2002 Act is taken but there is a commercial property carrying such a value which could satisfy the claim of financial institution or any such case where the rights of the parties could be settled equitably.

It is well settled that in the absence of any statutory obligation created by guidelines or instructions, a writ of mandamus cannot be sought, as has been held in various judgments of Hon'ble the Supreme Court in the cases of **Rai Shivendra Bahadur v. Nalanda College, AIR 1962 SC 1210; Umakant Saran v. State of Bihar, (1973) 1 SCC 485; Mani Subrat Jain v. State of Haryana, (1977) 1 SCC 486;Ramesh Prashad Singh v. State of Bihar, (1978) 1 SCC 37; Union of India v. Orient Enterprises, (1998) 3 SCC 501; and Union of India v. C. Krishna Reddy, (2003) 12 SCC 627**. Moreover, in contractual matters the Courts are reluctant to issue a writ of mandamus. In this regard reliance is placed on a judgment of Hon'ble the Supreme Court in the case of **LIC of India v. Asha Goel, (2001) 2 SCC 160**. Hon'ble the Supreme Court in the case of **Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India, (1992) 2 SCC 343** has observed as under:-

> "31. ……Reserve Bank of India which is banker's bank is a creature of statute. It has large contingent of expert advise relating to the matters affecting the

economy of entire country and nobody can doubt the bona fides of the Reserve Bank, in issuing the impugned directions of 1987. The Reserve Bank plays an important role in the economy and financial affairs of India and one of its important functions is to regulate banking system in the country.

32. ……Courts are not to interfere with economic policy, which is the function of experts. It is not the function of the courts to sit in judgment over the matters of economic policies and it must necessarily be left to the expert bodies."

In view of the above discussion, the following principles emerge:-

A. The One Time Settlement Schemes issued by Reserve Bank of India do not have any statutory roots. Therefore, such schemes do not confer any statutory right on a borrower to seek their enforcement by issuance of a mandamus nor it create any corresponding legal duty on the financial institution.

B. There is no provision made by Section 21 and Section 35A of the Act, which may empower a Chief General Manager to issue One Time Settlement Scheme. Therefore, for this reason also it lacks statutory content.

C. The Courts can, however, in deserving cases in the interest of justice and to balance equities may issue

mandamus. However, it has to be strictly to avoid injustice to the parties as an exception and not in a routine manner.

In view of the above, the writ petitions fail and the same are dismissed. The amount of Rs. 50 lacs deposited by the petitioner-company shall be appropriated by the respondent-bank towards its dues. However, since substantial amount was deposited by the petitioner-company, the respondent-bank shall reconsider as to whether all the secured assets are required to be sold or its claim could be satisfied by restricting the sale to some of them. In the alternative, the petitioner-company shall be entitled to move appropriate application before the Debts Recovery Tribunal for any relief as the appeal filed by the petitioner-company is still pending.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 30, 2007
Pkapoor

FIT FOR INDEXING